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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HELMUT FITZ

Appeal 2009-0034
Application 10/829,240
Technology Center 3600

Decided:¹ May 26, 2009

Before: JENNIFER D. BAHR, STEVEN D.A. MCCARTHY, and STEFAN
STAICOVICI, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Helmut Fitz (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 10-18. Claims 1-9 have been canceled. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to an extension guide fitting for drawers. An extension rail 4 is attached to a drawer; a carrier rail 2 is attached to the inside of a furniture body; and a middle rail 3 is disposed in between. Specification 3:8-10, fig. 2. Carriages 5 have running rollers that transmit the load between rails 2, 3, and 4. Specification 3:11-14, fig. 2. Stationary rollers 8 are mounted in a rocker member 14, the rollers 8 being arranged at the front of the carrier rail 2 such that extension rail 4 rests on rollers 8 when the drawer is in the closed position. Specification 3:18-21, 30-32, figs. 7, 8.

Claim 10, reproduced below, is illustrative of the claimed invention.

10. An extension guide fitting for a drawer,
comprising:

- an extension rail to be attached to a drawer;
- a carrier rail to be attached to a furniture
body;
- a middle rail arranged to run between said
extension rail and said carrier rail;
- carriages each having running rollers
mounted therein for transmitting a load between
said extension rail, said middle rail, and said
carrier rail;
- a rocker member mounted at a front portion
of said carrier rail; and

stationary support rollers mounted in said rocker member, said rocker member and said stationary support rollers being arranged so that said extension rail runs on said stationary support rollers and is supported by said stationary support rollers at least when said extension rail is in a closed position.

The Rejections

Appellant seeks review of the Examiner's rejection under 35 U.S.C. § 103(a) of claims 10-18 as being unpatentable over Julius Blum GmbH.² (AT 004518 U1, published Aug. 27, 2001, hereinafter "Julius Blum") in view of Fleisch (US 5,895,102, issued Apr. 20, 1999).

SUMMARY OF DECISION

We REVERSE.

ISSUE

Appellant argues that the Examiner has not shown that the subject matter of claims 10-18 is unpatentable under 35 U.S.C. § 103(a) in view of Julius Blum and Fleisch. Appellant argues claims 10-18 as a group.

The issue presented in this appeal is whether the Appellant has demonstrated that the Examiner failed to articulate reasoning with rational underpinning to support the conclusion that the combination of the drawer guide described in Julius Blum with the supporting member described in

² Both the Examiner and Appellant refer to this reference as "Vorarlberg." The assignee of this patent is Julius Blum GmbH, located in the Austrian state of Vorarlberg. We will refer to this reference by the assignee of the Austrian patent, shortened to Julius Blum.

Fleisch renders obvious the claimed rocker member mounted in a front portion of a carrier rail of a drawer guide. Br. 5, Ans. 6.

FACTS PERTINENT TO THE ISSUES

- FF1 Julius Blum describes a drawer guide. The drawer guide is made up of a support rail 1 or 2 ("carrier rail") that is mounted to the side wall of a furniture body; a pull-out rail 4 ("extension rail") attached to a drawer 10; and a center rail 3 ("middle rail") between the two. Julius Blum 4:8-11, fig. 1. Carriages 5, 6, and 7 are disposed between the rails 2, 3, and 4, and contain rollers that bear the weight between the rails. *Id.* 4:12-19, fig. 1.
- FF2 The Examiner finds that Julius Blum describes a fixed block 12 with a single roller 8 located at the front of support rail 2. Ans. 3. This fixed block 12 and roller 8 serves to support the front end of pull-out rail 4. Julius Blum 4:20-22, 5:1-4, figs. 1, 3, 4.
- FF3 The Examiner finds that Julius Blum does not disclose a rocker with stationary rollers. Ans. 4; *cf.* FF2 (noting a similar function achieved with a fixed block and single roller).
- FF4 Fleisch describes a supporting member for a drawer guide. The supporting member is made of end piece 10, supporting lever 13, and rollers 11, 18, and 25. Col. 4, ll. 57-60, col. 5, ll. 2-7, 40-45. The supporting member is attached via end piece 10 to the rear of drawer 5 such that it moves with drawer 5. Figs. 1-3.
- FF5 The supporting lever 13 of Fleisch is pivotally attached at pivot 14 to end piece 10. Col. 4, ll. 58-60. As shown in fig. 3, when the drawer 5

is extended, the supporting lever 13 is in a lowered position, with roller 11 sharing the weight of drawer 5 with roller 7 (not shown). Col. 5, ll. 2-10. If the weight of the drawer as it is opened causes an upward moment on roller 11, supporting roller 18 engages upper web 19 to prevent drawer 5 from tilting. Col. 5, ll. 10-23. When the drawer is pushed in, supporting lever 13 is pivoted upward by the pulling force of spring 17, causing supporting lever 13 to rotate upwards as shown in figs. 1 and 2 along guide surface 22 using roller 25. Col. 5, ll. 31-45, 49-54.

FF6 In the closed position, the supporting member of Fleisch supports drawer rail 8 with rollers 11 and 25. Roller 11 supports the weight of drawer rail 8. FF5. When the drawer is closed, roller 25 rests against end stop 26 to limit the lateral movement of drawer rail 8. *See* col. 5, ll. 57-60, fig. 1.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). It is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d, 1071, 1073 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual

determinations, the examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (*cited with approval in KSR Int’l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *See Oetiker*, 977 F.2d at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

ANALYSIS

The Examiner found that Julius Blum describes each element of independent claim 10 (*see* FF1, Ans. 3) except for the rocker member with stationary rollers element used to support the drawer (FF3). Julius Blum does, however, show a single stationary roller and a non-rocking block mounted at the front of a support rail used to support the drawer. FF2. The Examiner then determines that “[t]he use of rocker members in drawer guides is known in the art however, as shown by Fleisch.” Ans. 4. Fleisch describes a support member (FF4) that is pivotally attached to the back end of a drawer to provide support for the drawer (FF5, FF6). *See also* Ans. 4. Given these references, the Examiner reasons that it would have been obvious to modify the single, fixed roller in Julius Blum with the multi-roller rocker in Fleisch because the combination “would allow for better support of the drawer as well as better accommodating any slide member irregularities.” *Id.*

Appellant argues that because the rocker member of Fleisch is not mounted in a front portion of a carrier rail, a person of ordinary skill in the art would not have had a reason to locate the supporting member of Fleisch at the front portion of a carrier rail, as called for in independent claims 10 and 18 (Br. 5 and 7). According to Appellant, combining Julius Blum and Fleisch in such a manner would change the principle of operation of Fleisch, and thus could not have been made (Br. 6-8).

Appellant's argument regarding the rationale for combining Julius Blum and Fleisch is persuasive. The Examiner has not provided reasoning with rational underpinning sufficient to explain why Fleisch's teachings concerning Fleisch's non-stationary, rear-mounted support member (*see* FF4) would have provided one of ordinary skill in the art reason to modify the stationary, front-mounted support member of Julius Blum (*see* FF2). The Examiner's purported reasons, allowing for "better support of the drawer" and "accommodating any slide member irregularities," do not provide a rational underpinning for the combination.

Regarding the "better support" line of reasoning, it is not clear how the support member of Fleisch provides better support than the rollers already found in Julius Blum. *See* FF2. The support member of Fleisch is located in the rear of drawer 5. FF4. When drawer 5 is opened past a certain point, the rotational forces caused by the weight of the drawer along the track lift roller 11 off the track bottom and engage roller 18 at the track top. FF5. Fleisch's rear-mounted support member thereby counteracts the rotational forces with roller 18.

Mounting Fleisch's support member at the front of Julius Blum's carrier rail would not appear to assist in supporting rotational forces on a

drawer that has extended past a certain point. Further, the Examiner does not address the fact that Fleisch's support member is a moving support (FF4), and how this moving support would be combined with the fixed support of Julius Blum (FF2).

Regarding the "accommodating irregularities" line of reasoning, it is not clear how Fleisch addresses this problem. As mentioned above, Fleisch describes a supporting member for the weight of the drawer and for any rotational moment that arises when the drawer extends past a certain point. FF5, 6. The Examiner provides no articulated reasoning that demonstrates how Fleisch would "accommodate irregularities," or why one of ordinary skill in the art would combine Fleisch with Julius Blum to provide this benefit.

For the above reasons, the Examiner has failed to establish a prima facie case that the subject matter of claims 10, and of claims 11-17, which depend from claim 10, would have been obvious in view of Julius Blum and Fleisch.

Claim 18 requires a rocker member with stationary support rollers mounted on each carrier rail. The inherency finding with which the Examiner seeks to support the rejection of claim 18 (Ans. 5) adds nothing that would make up for the deficiency in the combination of Julius Blum and Fleisch discussed above. Therefore, the rejection of claim 18 is likewise not sustained.

CONCLUSION

Appellant's arguments persuade us that the Examiner erred in rejecting claims 10-18 as unpatentable under 35 U.S.C. § 103(a) by not providing a reason with rational underpinning to support the conclusion that the combination of the drawer guide described in Julius Blum with the supporting member described in Fleisch renders obvious the claimed rocker member mounted in a front portion of a carrier rail of a drawer guide.

DECISION

The Examiner's decision is reversed as to claims 10-18.

REVERSED

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| LV:

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